

1 REMARKS

2 Status of the Claims

3 Claims 1-23, 36-59, 61, and 62 are now pending in the present application, Claims 24-35
4 having been previously canceled, Claim 60 having been canceled in the present amendment, and new
5 Claim 62 having been added in the present amendment. Claims 1, 3, 5, 7, 9-16, 18-23, 36, 37, 39, 40,
6 46, 47, 49, 52-54, 58, 59, and 61 have been amended to more clearly define the invention and
7 distinguish over the cited art.

8 Telephone Interviews with Examiner Ali and Supervising Examiner Hosain T. Alam

9 Around January 23, 2006, applicants' attorney (Michael C. King, Registration No. 44,832)
10 conducted a series of telephone interviews with Examiner Ali and Supervising Examiner
11 Hosain T. Alam. Both the Examiner and his supervisor suggested potential limiting amendments,
12 which they believed might distinguish the claims from the prior art. Applicants' attorney would like
13 to thank both the Examiner and his supervisor for their willingness to discuss these matters and offer
14 suggestions for amending the claims to put the case in condition for allowance.

15 Subsequently, having once again reviewed the prior art, as well as the proposed limiting
16 amendments, applicants' attorney again contacted the Supervising Examiner to specifically inquire as
17 to why the terms "server-hosted software application" and "version" were being interpreted so
18 broadly, so that the cited prior art was viewed as appropriate for rejecting the claims.

19 While recognizing that MPEP 2111 permits an Examiner to afford the terms employed in
20 claims their broadest reasonable interpretation, applicants' attorney pointed out that it appeared the
21 terms "server-hosted software application" and "version" were being afforded an unreasonably broad
22 interpretation, particularly given the scope of the specification as filed. Thus, it appeared that the
23 terms were being interpreted in a manner that is inconsistent with the specification and the clear
24 meaning of the claim recitation.

25 The Supervising Examiner suggested that a further response be prepared, including
26 illustrative examples of how the term "version" was employed in applicants' specification, so as to
27 support applicants' position that the use of the term in the claims was inconsistent with the rejection
28 over the cited art.

1 Interpretation of Claims under MPEP 2111

2 The Examiner has indicated that the claims have been rejected because the Examiner is
3 allowed to apply the broadest reasonable interpretation to the terms in applicants' claims, *consistent*
4 *with the specification*. It appears that the Examiner is interpreting the terms "server-hosted software
5 application" and "version" so broadly as to be unreasonable. Applicants respectfully submit that it
6 appears that the Examiner is interpreting these terms in a manner inconsistent with applicants'
7 specification, and that the claims should be analyzed by interpreting these terms only as broadly as is
8 reasonable in light of their use in applicants' specification. In addition, applicants have amended the
9 claims to provide a clearer indication of the meaning of these terms, and thus, to provide clear
10 support for how the amended claims distinguish over the art cited.

11 The term "server-hosted software application" as used in applicants' specification and in the
12 claims is intended to refer to a software application, such as a financial program, which could be
13 implemented on a client computer that is not connected to a network as a stand-alone application, but
14 instead, is implemented in a networked environment, where a plurality of clients access the software
15 application over a network. Instead of being implemented on each individual client computer, the
16 software application is only executed on one or more servers servicing the clients on the network. At
17 the time applicants' present patent application was filed, such implementations were and are still
18 commonly referred to as "server-hosted applications." The specification as filed specifically refers to
19 the FINANCE MANAGERTM financial software application as an "exemplary server-hosted
20 application." At the time the present patent application was filed, individual users could purchase,
21 install and use various types of financial software (such as QUICKENTM and MONEYTM) on their
22 own personal computers, without requiring any network access. Instead of paying the purchase price
23 for a stand-alone software application that is executed on the client's computer, the client accessing a
24 server-hosted application can pay a subscription fee (generally a monthly fee) for use of the server-
25 hosted application. One advantage of using a server-hosted application is that the server operator can
26 be responsible to install any new or updated versions of the server-hosted application, so that clients
27 have access to the most up-to-date version of the server-hosted application, and thereby need not
28 purchase a new version of a software application, or install a new version of the software application
29 on their personal computer. In contrast, individuals using stand-alone applications that are installed
30 on their own computer systems have to purchase each new version of the stand-alone software

1 application that is released to benefit from the changes provided in the most current version. Thus,
2 the server-hosted application business model enables clients of the network to enjoy the most current
3 version (or most current software release) of a particular software application without having to
4 continually purchase and install new releases of a software application as they become available. At
5 the time the application was filed, the server-hosted application business model was very well-known
6 in the art.

7 It appears that a primary reference cited by the Examiner (i.e., the Peterson reference) deals
8 with a business model in which clients of the network can utilize memory storage resources
9 distributed throughout a plurality of different servers coupled to the network. Significantly, such a
10 business model is distinctly different than the server-hosted application business model discussed
11 above, and thus, very different than the server-hosted application model described in applicants'
12 specification and referenced in applicants' claims. It is important to understand that even if the
13 software applications disclosed by Peterson for implementing Peterson's method (applications
14 configured to keep track of network memory resources) were executed directly on a client computer,
15 the client would not be able to utilize such software in a stand-alone mode (i.e., when not connected
16 to a network), because Peterson's software is specifically configured to be used in a *networked*
17 environment. Without a network connection, Peterson's software is useless (because execution of
18 Peterson's software is based on network communications between a central server, a remote client,
19 and memory resources residing at remote locations accessible over the network). In contrast, a
20 server-hosted application is simply an application that *could be* implemented as a stand-alone
21 software product on an individual computer that is not connected to a network, but *is instead*
22 implemented on a server accessed over a network, such that a single software application can be
23 shared by many users. Again, the business model that uses a server-hosted application is very well-
24 known and understood in the art and would NOT be understood by one of ordinary skill to be
25 equivalent or correspond to the software program disclosed by Peterson.

26 There appears to be absolutely no basis for affording the term "server-hosted application" any
27 broader interpretation than that described above. Such a broader interpretation would be entirely
28 inconsistent with applicants' specification and with the ordinary meaning of the term as would have
29 been recognized by one of the ordinary skill in the art at the time applicants' patent application was
30 filed. Clearly, applying a broader interpretation of claim language than is reasonable to reject claims

1 is contrary to the standards articulated in MPEP 2111. Applicants respectfully request the Examiner
2 interpret the term "server-hosted application" consistent with the definition provided above (which is
3 consistent with the use of the term as discussed in applicants' specification), or provide *some clearly*
4 *articulated rationale* supporting a conclusion that a broader interpretation is reasonable and
5 *consistent with applicants' specification*. Further, if the Examiner does have a reasonable basis for
6 such a broad interpretation of the term, it would be extremely beneficial for the Examiner to suggest
7 language that would acceptably narrow the interpretation of the term, consistent with the
8 interpretation of the term as explained by applicants above. Applicants recognize that Examiners are
9 not required to make such suggestions; however, given the extended prosecution that this case has
10 undergone, such suggestions would certainly advance prosecution of the present application to
11 issuance.

12 The term "version," as used consistently throughout applicants' specification in connection
13 with a server-hosted application, is intended to mean *one of a sequence of modified executable code*
14 *releases for a software program, each release incorporating new modifications relative to other*
15 *releases. Each version is usually identified by a number, commonly of the form X.Y where X is the*
16 *major version number and Y is the release number. Typically an increment in X (with Y reset to zero)*
17 *signifies a substantial change in the functionality of a program or a partial or total re-*
18 *implementation in executable code, whereas Y increases each time the program is changed in some*
19 *less substantial way and again released.*

20 Illustrative examples from applicants' specification indicating how the term "version" has
21 been consistently used by applicants can be found in the *Background of the Invention* section of
22 applicants' specification, which discusses development of new versions of software, to correct bugs
23 or errors identified in prior versions, and sometimes to offer increased capabilities and functionality
24 in later released versions. In describing a preferred embodiment, the first paragraph on page 13
25 specifically employs the X.Y version format noted above to refer to different software versions as
26 they relate to the present invention. Clearly, applicants' use of the term "version" in the specification
27 as filed is entirely consistent with the definition of "version" set forth above. It must also be
28 recognized that this definition is well known in the art and will clearly be understood by one of
29 ordinary skill in the art.

1 There appears to be absolutely no basis for affording the term "version" any broader
2 interpretation than that described above. Such a broader interpretation as proposed by the Examiner
3 would be entirely inconsistent with applicants' specification, and thus contrary to the standards
4 articulated in MPEP 2111. Applicants respectfully request the Examiner interpret the term "version"
5 consistent with the definition provided above (which is consistent with the use of the term in
6 applicants' specification), or provide *some clearly articulated rationale* supporting a conclusion that
7 a broader interpretation is reasonable, given the use of the term in applicants' specification. Further,
8 if the Examiner does have a reasonable basis for such a broad interpretation of the term, it would be
9 extremely beneficial for the Examiner to suggest claim language that would acceptably narrow the
10 interpretation of the term, consistent with the definition of the term as explained by applicants above.

11 The Examiner's Response to Applicants' Request for Reconsideration Dated September 23, 2005

12 In order to advance prosecution of the present application, applicants have amended some
13 of the claims. However, it should be recognized that new Claim 62 is substantially a duplicate of
14 Claim 1 as originally filed. It is therefore relevant to address the Examiner's comments as
15 presented in the Final Office Action dated December 16, 2005.

16 **First**, the Examiner has asserted that applicants' claims fail to recite *a plurality of different*
17 *versions of the same software application being simultaneously installed on one or more network*
18 *servers*. Original Claim 1/new Claim 62 specifically recites *multiple versions* of a software
19 application and installing the multiple versions on a network. The Examiner appears to be arguing
20 that the term *multiple versions* could somehow be interpreted as meaning something other than a
21 *plurality of different versions*. Clearly, a plurality of versions are recited in the claim. It is also clear
22 from applicants' specification that the term "version" refers to *one of a sequence of modified*
23 *executable code releases for a software program, each release incorporating new modifications*
24 *relative to other releases*. There appears to be no logical basis for in interpreting the term *multiple*
25 *versions* to mean *multiple copies of the same version*. The term *versions* is plural, and cannot
26 logically mean anything other than *more than one version*, and because versions are understood in the
27 art to be each different from one another, the plural term "versions" inherently cannot mean anything
28 other than *a plurality of different versions*. There is simply no logical basis for asserting that original
29 Claim 1/new Claim 62 fails to indicate *a plurality of different versions of the same software*
30 *application being simultaneously installed on one or more network servers*. Applicants respectfully

1 request the Examiner to either allow new Claim 62, or articulate some logical basis supporting a
2 conclusion that the term *multiple versions* can mean anything other than a plurality of different
3 versions.

4 **Second**, the Examiner has asserted that Peterson teaches that the multiple copies disclosed
5 *are different versions of the software application*. Significantly, the term version does not appear
6 in Peterson's disclosure. The Examiner has referred to a specific section of the Peterson reference
7 as disclosing *multiple copies are different versions of that software application*. The section to
8 which the Examiner refers clearly does disclose multiple *copies* of the very same software
9 application – i.e., of the same version. However, the Examiner has not clearly articulated his
10 reasoning for concluding that these multiple *copies* are somehow the equivalent of different
11 *versions*. Particularly given that the term “version” is not even employed by Peterson, there
12 appears to be no reasonable basis for coming to such a conclusion. Peterson's disclosure of
13 software for updating a database of network memory storage resources does not appear to have any
14 logical connection to concluding that a plurality of different copies of the same software
15 application represent different versions of the software application. Applicants respectfully request
16 the Examiner to articulate his reasons for coming to his stated conclusion.

17 **Third**, the Examiner has asserted that updating data related to storage resources available on a
18 network is equivalent to *updating a version of the server-hosted application*. With all due respect,
19 the logic behind that statement is completely unclear to applicants. In prior responses, applicants
20 have argued that updating data in a network environment is not equivalent to updating a version of a
21 server-hosted application. Ignoring for the moment that the software application disclosed by
22 Peterson is not equivalent to a server-hosted application as the term is used by those of ordinary skill
23 in the art and by applicants, even if the software application disclosed by Peterson is, *arguendo*,
24 equivalent to a server-hosted application, applicants simply cannot understand the Examiner's
25 conclusion that changing data related to memory resources for a software application is logically
26 equivalent to changing from a first version of the software application, to a second version of the
27 software application. Peterson never discusses changing any software application disclosed in his
28 specification from a first version/release (e.g., a release 1.2) to a second version/release (e.g., a
29 release 1.3 or a release 2.0). In contrast, it is clearly apparent from applicants' specification that the
30 term “version” is intended to represent a particular release of an application having some

1 modification of the executable code so that the code is different than in other releases. Peterson
2 simply does not disclose anything about how a software application employed to implement his
3 method is updated from a first version to a second version. Applicants respectfully request that the
4 Examiner articulate his reasons for concluding that Peterson discloses replacing any software
5 application employed in Peterson's system with a different version/release of the same software
6 application. If the Examiner is asserting that changing data used by a software application results in a
7 new version of that software application, then applicants respectfully request the Examiner to
8 articulate: (1) what basis the Examiner has for interpreting the term version in a manner inconsistent
9 with applicants' specification as filed; and, (2) why Claim 61 as presented in applicants response of
10 September 23, 2005 was rejected, where that claim specifically indicated that *the first version and the*
11 *second version correspond to two different releases of same the server-hosted application*. It does
12 not appear that updating data used by a software application in a networked environment can
13 reasonably be considered to be equivalent to updating *a software application* in a networked
14 environment from a first release of the software application to a second release of the software
15 application.

16 Claims Rejected under 35 U.S.C. § 103

17 The Examiner has rejected Claims 1-23 and 36-58 as being obvious over Peterson
18 (USPGPUB 2002/0103907) in view of Pezutti (USPGPUB 2004/0249927). The Examiner asserts
19 that Peterson discloses most of the elements of the claimed invention, and that Pezutti discloses each
20 remaining element that is not disclosed by Peterson. The Examiner asserts that it would be obvious
21 to one of ordinary skill in the art of data processing to combine the teachings of the cited art, because
22 such a combination would have provided network access services for the benefit of network
23 providers, service providers, and customers. The Examiner further notes that Pezutti suggests that
24 installation of his invention improves service to customers, network providers and service providers,
25 which provides motivation to modify Peterson in view of Pezutti to achieve applicants' claimed
26 approach. Applicants respectfully disagree with this conclusion for the following reasons.

27 In the Final Office Action dated December 16, 2005, the Examiner asserts that it is logical for
28 the Examiner to focus on the limitations that are at the crux of the invention and not involve a lot of
29 energy and time for things that are not central to the invention. Applicants respectfully submit that
30 the crux of the invention is intended to be as follows. In a networked environment, an application

1 residing on a server is made available for use by a plurality of clients. As is well recognized in the
2 art, new versions or releases of applications regularly become available. That is, the application can
3 be updated from one specific release of the application to a different specific release of the
4 application, or, as described in applicants' specification, the application is updated from one version
5 to another version (such as, from version 1.1 to version 1.2). Simply removing a first version (i.e., a
6 first release) of the application before installing a second version of the application would interrupt
7 the ability of the clients to access the application during the update process. If the second version is
8 installed while the first version is also installed, some mechanism must be provided for determining
9 which clients should be directed to which version of the application. Applicants believe the claims
10 clearly recite this concept.

11 The art cited by the Examiner does not appear to be directed to an equivalent of applicants'
12 claims. Applicants cannot tell whether the Examiner has not understood the above-described
13 concept, or whether the Examiner believes that the specific terms applicants have used to claim this
14 concept should be interpreted to mean something entirely different (because the cited art appears to
15 be entirely different than applicants' claim recitation). Applicants believe it would facilitate
16 prosecution of this application if the Examiner would indicate that he understands and agrees that the
17 claims are directed generally to the concept discussed above, or if any particular term, phrase, step or
18 component recited by applicants' claims appears inconsistent with the concept, or appears unclear, to
19 suggest alternatives.

20 Because the cited art appears to have so little to do with the concept discussed above, it has
21 been difficult for applicants to determine how or if the claims should be amended to distinguish over
22 this art. If the Examiner truly believes that the cited art is entirely on point, it would be extremely
23 helpful to applicants for the Examiner to articulate in detail his reasons for concluding how the cited
24 art teach the concept recited in at least applicants' independent claims.

25 Independent Claims 1, 36, 58, 59, and 61 have each been amended to make it clear that the
26 term "version" is intended to convey a distinct release of a server-hosted application. Each claim
27 clearly recites a networked environment including a plurality of versions of a server-hosted
28 application, and each claim specifically recites that each version corresponds to a different release of
29 the server-hosted application, with each different release including some modification relative to any
30

1 other release. The terms *version* and *release* as applied to software applications in the computing arts
2 are well-recognized as relating to the following definition:

3 The term "version" is usually used in the context of computer software, in
4 which the version of the software product changes with each modification in
5 the software. (*Wikipedia – The Free Encyclopedia*).

6 The definition above is entirely consistent with applicants' specification, and there appears to
7 be no reasonable basis for interpreting the term version in any other manner. Furthermore, as
8 amended, the claims clearly indicate that the term version is related to the term release, and it should
9 be apparent that Peterson does not relate to updating software applications in a networked
10 environment from one release of the software application to a different release of the software
11 application. The updating described by Peterson simply provides current data to a single version of a
12 software application, so that the software application can process the most current data. The updating
13 disclosed by Peterson is not relevant to replacing a first version of the software application with a
14 second version of the software application. Applicants' claims are clearly directed to migrating or
15 associating clients to a particular version or release of a software application. Peterson clearly relates
16 to associating clients to a particular server or network resource where memory resources are
17 available, and Peterson discloses that copies of the software applications facilitating allocating
18 memory resources reside at both a central server and at each node or server where such memory
19 resources exist. Even if Peterson is considered to therefore associate a particular client to a particular
20 application residing at the memory resource to which the client is directed, there is absolutely no
21 basis to conclude that the specific memory resource/application to which Peterson's clients are
22 directed has anything to do with one of different versions or releases of a software application at that
23 memory resource. Peterson directs clients to specific memory resources because of the memory
24 resources available there, not because one memory resource has a specific version of the software
25 application, while another memory resource has different version of the software application.

26 The client association disclosed by Peterson is not equivalent to the client migration disclosed
27 in applicants' specification and recited by applicants' claims. Peterson associates clients based on
28 available memory resources, and it appears that each application residing at a particular memory
29 resource is the same version or release of an application residing at any other memory resource. In
30 contrast, applicants' claims provide for migrating clients relative to a specific version/release of the

1 server-hosted application. Because Peterson does not address or relate to the problem of how to update a
2 server-hosted software application from a first version to a second version on the network, without
3 adversely impacting clients, and because Pezutti similarly does not address the issue of migrating clients
4 from one version of a server-hosted software application to another version of the server-hosted software
5 application, there is no reason why one of ordinary skill in the art would be led to applicants' claimed
6 invention by combining what is taught by Peterson and Pezutti. These two references do not teach or
7 suggest applicants' claim recitation. Significantly, neither reference relates to a network implementing
8 multiple versions of the same server hosted application. Accordingly, the rejection of Claims 1-23
9 and 36-59 and 61 as being obvious over Peterson in view of Pezutti should be withdrawn (Claim 60
10 having been canceled in the present amendment).

11 The preceding comments apply to each independent claim in the present patent application. It
12 should be noted that applicants have not specifically discussed the patentability of each dependent
13 claim over the cited art, and have chosen to forgo such an analysis in an effort to reduce the
14 complexity and length of this response. That decision should not be construed as an admission that
15 the dependent claims are not patentably distinguished over the cited art for additional reasons.

16 Claim 59 further distinguishes over the cited art, because as amended, Claim 59 specifically
17 defines the term server-hosted application. The language in Claim 59 indicates that the server-hosted
18 application could have been executed by the client, if the server-hosted application resided on the
19 client instead of on the network hosting the server-hosted application, even if the client did not have
20 access to the network. The software applications disclosed by Peterson are each specifically
21 configured to enable access to memory resources distributed throughout a network, so that they can
22 be accessed by clients of the network. Various applications are required to facilitate this process. A
23 central server is required to have an application that continually receives updated information
24 regarding memory resources from each memory resource in the network. Each memory resource in
25 the network is required to have an application configured to communicate its own memory resources
26 to the central server. None of those applications could be executed on a client that had *no network*
27 *access*, because execution of all of the software applications disclosed by Peterson *requires* network
28 access. None of the art cited by the Examiner teaches or suggests modifying Peterson to achieve an
29 equivalent to what is recited by applicants in this amended claim. Claim 59 is thus distinguishable
30 over the cited art for this additional reason.


1 Claim 61 further distinguishes over the cited art, because as amended, Claim 61 specifically
2 recites the step of **removing** a first version of the server-hosted application from the network once all
3 of the clients have been migrated to a second version of the server-hosted application. Peterson does
4 not teach or suggest removing a specific version or a specific release of a server-hosted application
5 from a network. None of the art cited by the Examiner teaches or suggests modifying Peterson to
6 achieve an equivalent invention. Claim 61 is thus distinguishable over the cited art for this additional
7 reason.

8 Patentability of Newly Added Claim 62

9 New Claim 62 has been added in the present amendment. New Claim 62 substantially
10 reproduces Claim 1 as originally filed. As discussed above, if the term "version" is interpreted in a
11 manner consistent with the use of the term in applicants' specification as filed as required by
12 MPEP 2111, Claim 62 clearly distinguishes over the cited art, because the cited art does not relate to
13 different versions (i.e., different releases) of a server-hosted application.

14 In view of the amendments and the Remarks set forth above, it will be apparent that the claims in
15 this application define a novel and non-obvious invention, and that the application is in condition for
16 allowance and should be passed to issue without further delay. Should any further questions remain, the
17 Examiner is invited to telephone applicants' attorney at the number listed below.

18
19 Respectfully submitted,

20 
21
22 Michael C. King
23 Registration No. 44,832

24 MCK/RMA:elm

25
26 I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed
27 envelope as first class mail with postage thereon fully prepaid addressed to: Commissioner for Patents,
28 Alexandria, VA 22313-1450, on February 23, 2006.

29 Date: February 23, 2006

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